

**IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO (CANTON)**

IN RE:

Daniel McCarthy  
Christina McCarthy  
Debtors

- \* CASE NO. 19-61737
- \* CHAPTER 7
- \* CHIEF JUDGE RUSS KENDIG
- \*
- \* **MOTION FOR LEAVE TO FILE THIS**
- \* **CASE REGARDLESS OF 11 U.S.C.**
- \* **§109(g)(2)**
- \*

**NOW COME** Debtors, Daniel and Christina McCarthy, by and through counsel, and move this Honorable Court for leave to file this chapter 7 case regardless of 11 U.S.C. §109(g)(2).

In August 2016, Debtors surrendered their 2009 Kia Optima to Creditor Byrider Finance LLC dba CNAC ("hereinafter CNAC"). Debtors filed for Chapter 13 relief on November 7, 2018 under Case 18-62245, listed CNAC as an unsecured creditor, and had their Plan confirmed on February 7, 2019. On February 21, 2019, CNAC filed its Motion for Relief from Stay for the 2009 Kia Optima, evidently because they did not sell the vehicle for almost three years. The Debtors did not object to CNAC obtaining relief from stay. This Honorable Court granted relief on April 3, 2019. Due to a reduction in household income, the Debtors continued to struggle with their Chapter 13 payments and it became evident in June that they were not going to be able to continue. Debtors filed a Motion to Voluntarily Dismiss their Chapter 13 on June 28, 2019 and the Court granted their Motion on August 14, 2019. On July 16, 2019, CNAC sold the Kia. After a review of their household income, Debtors were then eligible to file for Chapter 7. On August 23, 2019, Debtors filed a Chapter 7 Petition, again listed CNAC as an unsecured creditor, and was assigned the case number above.

The United States Trustee's Office has indicated to Counsel that Debtors are barred from filing Chapter 7 for 180 days due to 11 U.S.C. §109(g)(2). Debtors do not believe they fall under this restriction as the motion for relief from stay by CNAC was fully addressed, CNAC liquidated the asset, and is not adversely affected by the automatic stay or filing of this new petition. As previously indicated, the vehicle was voluntarily surrendered and sold by Creditor at least 60 days ago, prior to the filing of this case. CNAC has been properly served in Debtors' Chapter 13 and 7 bankruptcy and no Creditor has filed any objections to Debtors' refiling.

Debtors believe that the congressional intent underlying §109(g)(2) was to protect the creditor from repeat filers stalling or stopping creditors from repossessing and disposing of collateral to which it was entitled. This case is differentiated. The vehicle was surrendered years ago and already sold at auction prior to the filing of this Chapter 7 case.

**WHEREFORE**, Debtors seek this Court's leave to file this chapter 7 case regardless of 11 U.S.C. §109(g)(2).

Respectfully submitted,

/s/ Deborah L. Mack #0067347  
Attorney Deborah L. Mack, JD/MBA  
53 E Main St, Lexington, OH 44904  
419.884.4600 \* 800.410.3620 facsimile  
Debbie@OhioFinancial.Lawyer  
Attorney for Debtors

## **CERTIFICATE OF SERVICE**

A copy of the foregoing Motion was served by regular U.S. Mail as permitted by the rules on September 25, 2019,

via the Court's CM/ECF system to the following who are listed on the Court's Electronic Mail Notice List:

- United States Trustee (Registered address)@usdoj.gov
- Tiiara Patton tiiara.patton@usdoj.gov
- Josiah L. Mason jlmaslontrustee@zoominternet.net

And upon the following parties at the addresses stated below:

Daniel & Christina McCarthy  
231 Clare Rd  
Ontario, OH 44906

and all parties listed on the creditor matrix

/s/ Deborah L. Mack

Label Matrix for local noticing  
0647-6  
Case 19-61737-rk  
Northern District of Ohio  
Canton  
Wed Sep 25 10:28:01 EDT 2019

Ability Recovery Services  
PO Box 4031  
Wyoming, PA 18644-0031

United States Bankruptcy Court  
Ralph Regula U.S. Courthouse  
401 McKinley Avenue SW  
Canton, OH 44702-1745

AFNI  
PO Box 3427  
Bloomington, IL 61702-3427

Avita Health System  
PO Box 637235  
Cincinnati, OH 45263-7235

American Education Services  
PO Box 61047  
Harrisburg, PA 17106-1047

Attorney General of United States  
Dept of Justice Tax Div Civil  
Trial Section, Northern Region  
PO Box 55  
Washington, DC 20044-0055

Chase Auto  
PO Box 24696  
Columbus, OH 43224-0696

(p) CHOICE RECOVERY INC  
1550 OLD HENDERSON ROAD  
STE 100  
COLUMBUS OH 43220-3662

Christopher B Murphy  
PO Box 2190  
Westerville, OH 43086-2190

Credit Acceptance Corp.  
25505 W 12 Mile Rd  
Southfield, MI 48034-8316

Credit Management  
4200 International Pkwy  
Carrollton, TX 75007-1912

Debt Recovery Solutions  
1669 Lexington Ave  
Suite A  
Mansfield, OH 44907-2944

Direct TV  
PO Box 5007  
Carol Stream, IL 60197-5007

Eagle Loan Company of Ohio, Inc.  
331 Lexington Springmill Rd #135  
Ontario, OH 44906-1373

Federal Loan Servicing  
PO Box 60610  
Harrisburg, PA 17106-0610

Franklin County Common Pleas  
345 S High St  
Columbus, OH 43215-4587

(p) INTERNAL REVENUE SERVICE  
CENTRALIZED INSOLVENCY OPERATIONS  
PO BOX 7346  
PHILADELPHIA PA 19101-7346

Kroger/ US Bank  
PO Box 790408  
Saint Louis, MO 63179-0408

Mansfield Municipal Court  
30 N Diamond St  
Mansfield, OH 44902-1738

(p) MEADE & ASSOCIATES INC  
ATTN BANKRUPCTY DEPARTMENT  
737 ENTERPRISE DRIVE  
LEWIS CENTER OH 43035-9438

North Coast Financial  
5299 Monroe St  
Toledo, OH 43623-3139

(p) OHIO ATTORNEY GENERAL'S OFFICE  
ATTN BANKRUPCTY UNIT COLLECTIONS ENFORCEMENT  
150 E GAY ST  
21ST FLOOR  
COLUMBUS OH 43215-3191

Ohio Attorney General  
30 E Broad St  
Columbus, OH 43215-3400

Ohio Dept of Taxation  
Attn Bankruptcy  
PO Box 530  
Columbus, OH 43216-0530

PNC Bank  
PO Box 61047  
Harrisburg, PA 17106-1047

(p) PORTFOLIO RECOVERY ASSOCIATES LLC  
PO BOX 41067  
NORFOLK VA 23541-1067

Radiology Assoc of Mansfield  
PO Box 757  
Mansfield, OH 44901-0757

Richard W Yost  
366 E Broad St  
Columbus, OH 43215-3819

US Dept of Education  
PO Box 7859  
Madison, WI 53707-7859

Verizon Wireless  
PO Box 4002  
Acworth, GA 30101-9003

Christina Nichole McCarthy  
231 Clare Rd  
Ontario, OH 44906-1363

Daniel William McCarthy  
231 Clare Rd  
Ontario, OH 44906-1363

Deborah L. Mack  
53 E Main Street  
Lexington, OH 44904-1224

Josiah L. Mason  
Canton  
153 W Main Street  
PO Box 345  
Ashland, OH 44805-0345

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

Choice Recovery Inc  
PO Box 20790  
Columbus, OH 43220

IRS  
200 N High St Room 425  
Columbus, OH 43215

(d) IRS  
Insolvency Group  
1240 E 9th St Room 493  
Cleveland, OH 44199

Meade & Associates  
737 Enterprise Dr  
Lewis Center, OH 43035

Ohio Attorney General  
150 E Gay St  
Columbus, OH 43215

Portfolio Recovery Associates  
120 Corporate Blvd Ste 100  
Norfolk, VA 23502

End of Label Matrix	
Mailable recipients	36
Bypassed recipients	0
Total	36